

PROCEEDINGS OF THE NINETY-SIXTH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

CHAIRS OF THE COMMITTEE
ON THE ANNUAL MEETING
Roger Alford
Mary Ellen O'Connell

CO-EDITORS OF THE PROCEEDINGS
Roger Alford
Mary Ellen O'Connell
PRODUCTION MANAGER
Edra London

CONTENTS

<i>A Note About the Proceedings</i>	ix
<i>Introduction</i>	x
Fourth Annual Grotius Lecture	
LECTURE COMMENTARY BY:	
Elizabeth Rindskopf Parker	1
Fair and Equitable Treatment Under NAFTA's Investment Chapter	
REMARKS BY:	
Charles H. Brower, II	9
Murray J. Belman	12
J. Christopher Thomas	14
Jack J. Coe	17
Humanitarian Law on the Conflict in Afghanistan	
REMARKS BY:	
Yoram Dinstein	23
Towards a Code of Conduct for Non-International Armed Conflicts: Current Efforts, Problems and Opportunities	
Dieter Fleck	25
Rights and Duties, as Captives and Captors, of Nonstate Intervenor During International and Internal Armed Conflicts	
Michael H. Hoffman	32
On the <i>Jus ad Bellum</i> and <i>Jus in Bello</i> of Operation Enduring Freedom	
Dino Kritsiotis	35
"Vertical" Conflicts Between International and National Tribunals	
Problems with the Concept of "Vertical Conflicts"	
A. Mark Weisburd	42
REMARKS BY:	
Harold Hongju Koh	45
International Law and the Legal Curriculum	
INTRODUCTION:	
Charlotte Ku	54
REMARKS BY:	
Jeffrey Lehman	55
James Feinerman	56
Timothy Dickinson	57
Edward Swaine	57
APPENDIX A	59

The UN World Conference Against Racism: A Racist Anti-Racism Conference	
<i>Anne Bayefsky</i>	65
Ethics and Interests	
<i>Richard Ned Lebow</i>	75
American Unilateralism	
<i>Philippe Sands</i>	85
LECTURE COMMENTARY BY:	
<i>Davis R. Robinson</i>	92
Bombing for Peace: Collateral Damage and Human Rights	
REMARKS BY:	
<i>Christina Cerna</i>	95
<i>Hurst Hannum</i>	96
<i>Christopher Greenwood</i>	100
<i>Tom Farer</i>	104
PANEL DISCUSSION	107
Update on Private International Law in the European Union—2001	
<i>Paul Beaumont and Helena Raulus</i>	109
Biotechnology, Human Rights, and Intellectual Property	
SUMMARY OF OPENING REMARKS BY:	
<i>Allyn L. Taylor</i>	114
Re-evaluating the Freedom of Scientific Inquiry Through Biotechnology and Human Rights	
<i>George P. Smith, II</i>	115
SUMMARY OF REMARKS BY:	
<i>Jensine Andresen</i>	116
SUMMARY OF CLOSING REMARKS BY:	
<i>Allyn L. Taylor</i>	119
Human Rights, Terrorism, and Trade	
SUMMARY OF REMARKS BY:	
<i>Frederick M. Abbott</i>	121
<i>Lori Fisler Damrosch</i>	128
Trade, Constitutionalism, and Human Rights: An Overview	
<i>Frank J. Garcia</i>	132
Peacemaking Practices "from the South": Africa's Influence	
African Contributions to the Law of Peacekeeping	
<i>Henry J. Richardson</i>	135
The Evolving Intervention Regime in Africa: From Basket Case to Market Place?	
<i>Jeremy Levitt</i>	136
Pro-Democratic Intervention in Africa	
<i>David Wippman</i>	143
Debate on the Theme: Internationalization of Legal Relations	
INTRODUCTORY REMARKS BY:	
<i>Roger Alford</i>	146
REMARKS BY:	
<i>Jonathon D. Blake</i>	148
<i>Vaughan Lowe</i>	153

Plaintiff's Diplomacy: A Review of the Issues	
<i>Susan L. Karamanian</i>	156
Presidential Panel: The Impact of the United States on International Law	
PANEL SUMMARY BY:	
<i>Christopher J. Borgen</i>	159
The State of State Responsibility	
REMARKS BY:	
<i>Pierre Klein</i>	168
<i>Laurence Boisson de Chazournes</i>	169
<i>Xue Hanqin</i>	172
<i>David D. Caron</i>	176
The Definition of Aggression and the ICC	
INTRODUCTORY REMARKS BY:	
<i>W. Michael Reisman</i>	181
REMARKS BY:	
<i>D. Stephen Mathias</i>	181
The Crime of Aggression: Making Operative the Jurisdiction of the ICC—Tendencies in the PrepCom	
<i>Phani Dascalopoulou-Livada</i>	185
REMARKS BY:	
<i>Jordan J. Paust</i>	190
International Family Law	
The Influence of International Conventions on Municipal Adoption Law: the Disclosure Debate	
<i>D. Marianne Blair</i>	193
The Costs and Benefits of the Internationalization of Family Law	
<i>Linda Silberman</i>	195
Legal Regulation of Subaltern Families in a Transnational World	
<i>Ratna Kapur</i>	198
A 90 Year-Old Snapshot of our Family of International Lawyers	
<i>Mark W. Janis</i>	201
How Are Nations Behaving?	
INTRODUCTORY REMARKS BY:	
<i>Louis Henkin</i>	205
REMARKS BY:	
<i>Antonia Handler Chayes</i>	206
Measuring Compliance	
<i>José E. Alvarez</i>	209
How Actors in World Politics Behave: Legalization and World Politics	
<i>Robert O. Keohane</i>	213
CLOSING REMARKS BY:	
<i>Louis Henkin</i>	217
Great Expectations: Where Does the Proliferation of International Dispute Resolution Tribunals Leave International Law?	
<i>Lucy Reed</i>	219
LECTURE COMMENTARY BY:	
<i>Ambassador Andrew Jacovides</i>	231

Reconceptualizing International Law in the Information Age

Lexus; Olive Trees; Globalization; Professors Henkin, Jessup, Lachs;

Opinio Juris

John King Gamble 238

LECTURE COMMENTARY BY:

Charles A. Hunnicutt 247

The Judicial Response to Terror: Issues, Problems, and Prospects

OPENING REMARKS BY:

Jordan J. Paust 250

State-Supported Terrorism and the U.S. Courts: Some Foreign Policy Problems

Barry E. Carter 251

Terrorism as War

Abraham D. Sofaer 254

Realism and Legalism

Overview: Realism in International Law

Richard H. Steinberg 260

Realism Versus Legalism in International Relations

Edwin D. Williamson 262

Realist Views of International Law

Stephen D. Krasner 265

Metaphors and Realism in International Law

Oscar Schachter 268

Realism and International Law: Two Optics in Need of Each Other

Andreas Paulus 269

The Adequacy of International Law for Arms Control, Post-September 11

Arms Control and Nonproliferation

Antonio Perez 273

A New Urgency About Anthrax: Recent Efforts to Prevent the Proliferation of
Biological Weapons in the Former Soviet Union

Jack M. Beard 275

Indigenous Peoples and the Global Trade Regime

A Social Theory of Fair Trade, with Special Reference to Indigenous Peoples

Russel Lawrence Barsh 279

Debate on the Theme: Legalization of International Relations

INTRODUCTORY REMARKS BY:

Mary Ellen O'Connell 291

Legalization: Interpreting the Empirical Evidence

Shirley V. Scott 291

REMARKS BY:

Anne-Marie Slaughter 294

Friedrich Kratochwil 296

Legalization of International Relations: A Dissent

Alfred P. Rubin 298

PANEL DISCUSSION 301

Consular Rights and the Death Penalty After *LaGrand*

INTRODUCTORY REMARKS BY:

<i>Joan Fitzpatrick</i>	309
-------------------------------	-----

REMARKS BY:

<i>Bruno Simma</i>	310
<i>Catherine Brown</i>	312
<i>John Quigley</i>	315
<i>Nigel Rodley</i>	318

AIDS in National and International Law

REMARKS BY:

<i>Mark E. Wojcik</i>	320
<i>Eleanor D. Kinney</i>	320
<i>Miriam Maluwa</i>	322
<i>John G. Culhane</i>	324
<i>Helena Walkowiak</i>	327
<i>Michele Forzley</i>	330

Why (Not) Seek Uniform Solutions?

REMARKS BY:

<i>Helen E. Hartnell</i>	332
Three Paradigms of Legal Unification: National, International, Trans- national	
<i>Ralf Michaels</i>	333
The Skeptic Speaks: I am Not a Blind, Pig-Stupid Opponent of Unification	
<i>Paul B. Stephan</i>	336
The Economics of Private Law Harmonization	
<i>John Linarelli</i>	339
The Better Part of Harmonizing Jurisdictional Law	
<i>Janet Walker</i>	342
PANEL DISCUSSION	347

Keynote Address

<i>Sandra Day O'Connor</i>	348
----------------------------------	-----

Late-Breaking Event Panel: The Role of Law and the Rule of Media and Politics in International Affairs

PANEL SUMMARY BY:

<i>Jonathan C. Hamilton</i>	354
-----------------------------------	-----

Common but Differentiated Responsibility

REMARKS BY:

<i>Christopher C. Joyner</i>	358
<i>Susan Biniaz</i>	359
<i>Charles E. DiLeva</i>	363
Common but Differentiated Responsibilities in Perspective	
<i>Edith Brown Weiss</i>	366

The "Horizontal" Growth of International Courts and Tribunals: Challenges or Opportunities?

REMARKS BY:

<i>Jonathan I. Charney</i>	369
<i>Richard B. Bilder</i>	371
<i>Bernard H. Oxman</i>	373
<i>Patricia M. Wald</i>	377

Overlegalizing Human Rights

An American Legend: The Overlegalization of Human Rights	
<i>Curtis F. Doebbler</i>	381
Overlegalizing Silences: Human Rights and Nonstate Actors	
<i>Robert McCorquodale</i>	384

The International Influences on National Constitutional Law in States in Transition

INTRODUCTORY REMARKS BY:

<i>Georg Nolte</i>	389
The Venice Commission of the Council of Europe	
<i>Giorgio Malinverni</i>	390
Two Conceptions of Constitutionalism	
<i>Jed Rubinfeld</i>	394
International Human Rights Standards and the Constitutional Jurisprudence of Transition States in Central and Eastern Europe	
<i>Pál Sonnevend</i>	397
PANEL DISCUSSION	399

Wrap-Up Panel: International Law After September 11

INTRODUCTORY REMARKS BY:

<i>Jane Stromseth</i>	401
REMARKS BY:	
<i>Philip Allott</i>	401
<i>David Scheffer</i>	404
PANEL DISCUSSION	407

<i>2002 Annual Meeting Program</i>	412
<i>2002 Phillip C. Jessup Moot Court Competition</i>	425
<i>Appendices</i>	427
<i>Index</i>	433

